



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 11 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John D. Daniello, Chairman
Delaware Democratic Party
P.O. Box 2065
Wilmington, DE 19899

RE: MUR 6665

Dear Mr. Daniello:

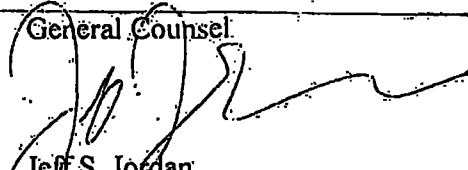
The Federal Election Commission reviewed the allegations in your complaint received on October 12, 2012. On December 8, 2014, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on December 8, 2014.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

Sincerely,

General Counsel

BY: 
Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosures:
Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alex Pires for U.S. Senate
Stephen W. Spence as treasurer
Alexander J. Pires, Jr.
Bottle & Cork
Jimmy's Grille & Catering, LLC

MUR 6665

I. INTRODUCTION

This matter was generated by a Complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act")¹ and Commission regulations by Respondents Alexander J. Pires, Jr. ("Pires"), Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity as treasurer (collectively the "Committee"), Bottle & Cork, and Jimmy's Grille & Catering, LLC ("Jimmy's Grille"). After reviewing the record, the Commission dismisses the allegations.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that Pires, an independent candidate in 2012 for the U.S. Senate from Delaware and his Committee violated the Act and Commission regulations by accepting prohibited in-kind corporate contributions in connection with two campaign events and by failing to affix disclaimers to the campaign's website and certain campaign materials. Compl. at 1-4. The Complaint alleges that Bottle & Cork and Jimmy's Grille are two incorporated businesses owned by Pires. *Id.* at 1. Pires reportedly held a kick-off event for his campaign, on May 26, 2012, at which food and beverages were provided to attendees "free of charge." *Id.* at 1-2. In addition, Bottle &

¹ On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 Cork employees allegedly dressed in their employee t-shirts and collected signatures in connection
2 with Pires's effort to appear on the general election ballot. *Id.* at 2. After reviewing the
3 Committee's financial disclosure reports, the Complaint alleges that no disbursements to Bottle &
4 Cork were reported for food, beverages, use of the company's space, or time spent by its employees
5 for their work at the event, resulting in prohibited in-kind corporate contributions. *Id.*

6 Subsequently, Pires and the Committee held a one-hour campaign event on June 11, 2012, at
7 Woodward Outdoor Equipment featuring "free chicken for attendees from Jimmy's Grille." *Id.* at
8 2; *see also id.*, Ex. A (news release announcing the event). The Complaint alleges that the
9 Committee's financial disclosure reports fail to disclose any disbursements to Jimmy's Grille for the
10 food reportedly provided at the event. *Id.* at 2. Therefore, the Complaint contends that the
11 Committee received prohibited in-kind corporate contributions from Jimmy's Grille and Woodward
12 Outdoor Equipment.² *Id.* at 3.

13 The Complaint also alleges that printed literature reportedly distributed by the Committee
14 constituted "general public political advertising" and, as such, should have included appropriate
15 disclaimers. *Id.* at 2-3; *see also id.*, Ex. B at 1-3 (copy of double-sided card with Pires's logo and
16 language supporting him and criticizing incumbent senator Tom Carper, as well as a document
17 entitled "Five Things I Believe" and identifying Pires by name).

18 More specifically, the Complaint alleges that the disclaimers also should have complied with
19 the Commission's regulations pertaining to printed material. *Id.* at 3. Finally, the Complaint

² The Complaint surmises that "these events may be just the tip of the iceberg, as the FEC reports indicate very few disbursements for event-related expenses . . ." Compl. at 3. Authorized candidate committees, such as the Pires Committee, must itemize disbursements to a vendor if the aggregated payments to that vendor exceed \$200 for the election cycle. 52 U.S.C. § 30104(b)(4)-(6) (formerly 2 U.S.C. § 434(b)(4)-(6)). Based on the available information, the record does not reflect that the Committee made payments to the vendors in this matter that would require itemization. Therefore, the Commission does not address this allegation further.

1 alleges that the campaign's website, www.36YearsIsEnough.com, failed to include an appropriate
2 disclaimer. *Id.*

3 Stephen W. Spence ("Spence"), the Committee's treasurer, filed a joint response on behalf
4 of the Committee, Pires, Bottle & Cork, and Jimmy's Grille ("Joint Response"). He explains that
5 "Bottle & Cork" is a trade name for Bottle Taproom, Inc., a Delaware corporation owned by Pires,
6 and that Jimmy's Grille is "affiliated with Mr. Pires." Joint Resp. at 1-2. Spence states that the
7 May 26, 2012 "Kick Off Event" included "a cameo appearance" by Pires, a first-time candidate, at
8 Bottle & Cork's musical "Jam Session," which was one of several events held throughout the
9 summer. *Id.* at 1-2. During a break in the music, Pires reportedly announced his candidacy for the
10 U.S. Senate. *Id.* at 2. Spence asserts that the announcement, which took no more than a few
11 minutes, did not transform the "previously-scheduled and unrelated" event into a campaign event,
12 and he denies that Bottle & Cork provided free food or beverages. *Id.* at 1-2.

13 Spence states that the Pires campaign set up a table outside Bottle & Cork on the same day,
14 where paid staff and volunteers "solicited signatures from Delaware registered voters to get Mr.
15 Pires on the Delaware ballot." *Id.* at 2. Spence asserts that he paid several individuals \$50 each in
16 cash for their efforts, and that his payments were reported as part of a campaign contribution
17 totaling \$300. *Id.* He denies that any of the individuals wore Bottle & Cork t-shirts and claims that
18 if any Bottle & Cork employees wore official t-shirts while soliciting signatures, they did so without
19 the campaign's knowledge or permission. *Id.*

20 Spence asserts that while he did not attend the June 11, 2012 event, he believes it was held
21 on Respondent Christopher Woodward's driveway and that fewer than ten individuals attended. *Id.*
22 at 2-3. Spence asserts that Jimmy's Grille supplied food worth \$166, but that, due to a billing error,

1 he did not receive the invoice until the Complaint was filed. *Id.*; *see also id.*, Ex. A at 4-5. Once
2 the invoice was discovered, Spence indicates that the Committee paid it on November 2, 2012. *Id.*

3 Addressing the Complaint's disclaimer allegations, Spence concedes that the Committee's
4 website initially included identifying information, but lacked the requisite language stating that the
5 Committee had paid for it. *Id.* at 3. After being made aware of the Complaint, Spence had the
6 disclaimer "Paid for and authorized by Alex Pires for U.S. Senate" added to the website. *Id.*
7 Spence describes the two pieces of campaign literature appended to the Complaint as a "Five
8 Things I Believe" handout, a one-page document, which was written by Pires in the first person, and
9 a double-sided 5-inch by 7-inch campaign card. *Id.* at 3-4. Spence explains that Pires or his
10 campaign staff delivered the "Five Things I Believe" handouts to approximately 100 individuals at
11 meetings early in the campaign and argues that there "could be no doubt who prepared or
12 distributed the document." *Id.* at 3. As for the campaign card, Spence acknowledges that the first
13 order of 5,000 cards, which were printed in May 2012 and distributed at several campaign stops,
14 lacked disclaimers. *Id.* at 4. When the campaign manager noticed the lack of attribution language
15 in June 2012, the cards were discarded and new cards were printed bearing the disclaimer "Paid for
16 by Alex Pires for U.S. Senate." *Id.*; *see also id.*, Ex. A at 2.

17 **B. Legal Analysis**

18 The Act and Commission regulations define "contribution" as any "gift, subscription, loan

19 . . . or anything of value made by any person for the purpose of influencing any election for Federal
20 office." 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); *see also* 11 C.F.R.
21 § 100.52(a). "Anything of value" includes all in-kind contributions, including the provision of
22 goods or services without charge or at a charge that is less than the usual and normal charge.
23 11 C.F.R. § 100.52(d)(1). The term "contribution" does not include "the value of services provided

1 without compensation by any individual who volunteers on behalf of a candidate or political
2 committee.” 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R.
3 § 100.74 (the value of services provided by a volunteer is not a contribution).

4 The Act and Commission regulations also prohibit candidates and their campaign
5 committees from knowingly accepting or receiving corporate contributions in connection with
6 federal elections. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); *see also* 11 C.F.R. § 114.2.
7 This prohibition extends to a campaign’s unreimbursed use of a corporation’s facilities, with limited
8 exceptions pertaining to volunteer activity at 11 C.F.R. § 114.9(a). Any person who uses a
9 corporation’s facilities for activity in connection with a Federal election is required to reimburse the
10 corporation within a commercially reasonable time in the amount of the normal and usual rental
11 charge. 11 C.F.R. § 114.9(d).

12 The Act and Commission regulations require a disclaimer whenever a political committee
13 makes a disbursement for the purpose of financing any public communication through any
14 broadcast, cable, satellite communication, newspaper, magazine, outdoor advertising facility, mass
15 mailing, or any other type of general public political advertising. 52 U.S.C. §§ 30101(22); 30120
16 (formerly 2 U.S.C. §§ 431(22), 441d(a)); *see also* 11 C.F.R. §§ 100.26, 110.11. A disclaimer is also
17 required for all websites of political committees available to the general public. 11 C.F.R.
18 § 110.11(a)(1). If a communication requiring a disclaimer is paid for by a candidate, a candidate’s

19 authorized committee, or its agents, the disclaimer must clearly state that the communication was
20 paid for by the authorized committee. 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1));
21 *see also* 11 C.F.R. § 110.11(b)(1).

22 While the Committee may have accepted in-kind corporate contributions, the Commission
23 concludes that the contributions appear to have been *de minimis*, and dismisses the allegations

1 accordingly. With respect to Bottle & Cork, although Pires announced his candidacy at the "Jam
2 Session," and the Committee collected signatures outside Bottle & Cork the same day, the possible
3 use of any associated corporate facilities appears to have been *de minimis*. Additionally, to the
4 extent that off-duty Bottle & Cork employees acted as volunteers to assist the campaign in
5 collecting signatures, such activity would not constitute a contribution. 52 U.S.C. § 30101(8)(B)(i)
6 (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74 (the value of services provided by a
7 volunteer is not a contribution). With respect to the June 11, 2012 event held in the driveway of
8 Woodward Outdoor Equipment, based on the location and number of persons who purportedly
9 attended, any potential corporate contribution resulting from the one-hour event was likely
10 *de minimis*.³

11 With respect to its website, the Committee acknowledges that although it included
12 identifying information, the website initially lacked the disclaimers required under 11 C.F.R.
13 § 110.11(a)(1). Joint Resp. at 3. When it was made aware of the omission through the Complaint in
14 this matter, the Committee states that it added a disclaimer to its website stating "Paid for and
15 authorized by Alex Pires for U.S. Senate." *Id.* Because the website contained some identifying
16 information and because the Committee took remedial action to ensure the website had proper
17 disclaimers, here the Commission dismisses the allegations with respect to the website.

³ During the June 11, 2012 event, the Pires campaign admittedly purchased \$166 worth of food from Jimmy's Grille. Joint Resp. at 2-3; *see also* Ex. A at 4-5 (Invoice from Jimmy's Grille). The Committee's failure to pay the bill until November 2, 2012, almost five months later may have been an extension of credit outside of Jimmy's Grille's normal course of business and, thus, may have constituted a contribution until paid. 11 C.F.R. § 100.55; *see also* 11 C.F.R. § 116.3(a)-(c). Although the facts at hand are not clear, to the extent that Jimmy's Grille, a limited liability company, has elected treatment as a corporation for federal tax purposes, the contribution could be considered a corporate contribution. 11 C.F.R. § 110.1(g). Even assuming the contribution was prohibited, it only amounted to \$166.

1 The other two communications at issue were apparently distributed by hand, and contained
2 information identifying them as Pires's campaign literature. *Id.* at 3-4. The cost of the "Five
3 Things I Believe" handouts, which were written by Pires and were distributed to only about 100
4 individuals, was likely *de minimis*. While the Committee concedes that campaign cards lacking a
5 disclaimer were distributed for approximately one month early in the campaign, the Committee
6 asserts that it noticed the lack of a disclaimer, discarded the cards, and printed new cards that
7 included a disclaimer, all before the Complaint in this matter was filed. *Id.* Because the two
8 communications contained some identifying information, because the first was distributed only to a
9 small number of people, and because the Committee took remedial action to ensure the second had
10 proper disclaimers, the Commission dismisses the allegations with respect to these two
11 communications.

12 In light of the Committee's remedial action and the *de minimis* nature of the potential
13 violations, the Commission exercises its prosecutorial discretion and dismisses the allegations that
14 Alexander J. Pires, Jr., Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity as
15 treasurer, Bottle & Cork, and Jimmy's Grille & Catering, LLC violated 52 U.S.C. § 30118(a)
16 (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2. *See Heckler v. Chaney*, 470 U.S. 821 (1985).
17 The Commission also exercises its prosecutorial discretion and dismisses the allegations that
18 Alexander J. Pires, Jr. and Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity
19 as treasurer violated 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)) and 11 C.F.R.
20 § 110.11(a)(1) and (b)(1). *See Heckler*, 470 U.S. at 821.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Woodward Outdoor Equipment

MUR.6665

I. INTRODUCTION

This matter was generated by a Complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended (the "Act")¹ and Commission regulations by Respondent Woodward Outdoor Equipment. After reviewing the record, the Commission dismisses the allegation.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that Alex Pires for U.S. Senate (the "Committee") held a one-hour campaign event on June 11, 2012 at Woodward Outdoor Equipment, a corporation. Compl. at 2; *see also id.*, Ex. A (news release announcing the event). In their Response, Christopher J. Woodward and Susan E. Woodward, the owners of Woodward Outdoor Equipment, explain that they were unaware "that allowing someone to use [their company's] parking area" could result in a violation of the Act. Woodward Resp. at 1. They state that they simply acceded to the Pires campaign's request to hold a "Meet and Greet" on their property. *Id.* Furthermore, the available information suggests that fewer than ten members of the public attended the event.

~~B. Legal Analysis~~

The Act and Commission regulations define "contribution" as any "gift, subscription, loan

¹ On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 . . . or anything of value made by any person for the purpose of influencing any election for Federal
2 office.” 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); *see also* 11 C.F.R.
3 § 100.52(a). “Anything of value” includes all in-kind contributions, including the provision of
4 goods or services without charge or at a charge that is less than the usual and normal charge.
5 11 C.F.R. § 100.52(d)(1).

6 The Act and Commission regulations prohibit corporations from making contributions in
7 connection with federal elections, and further prohibit candidates and their campaign committees
8 from knowingly accepting or receiving corporate contributions. 52 U.S.C. § 30118(a) (formerly
9 2 U.S.C. § 441b(a)); *see also* 11 C.F.R. § 114.2. This prohibition extends to a campaign’s
10 unreimbursed use of a corporation’s facilities, with limited exceptions pertaining to volunteer
11 activity at 11 C.F.R. § 114.9(a). Any person who uses a corporation’s facilities for activity in
12 connection with a Federal election is required to reimburse the corporation within a commercially
13 reasonable time in the amount of the normal and usual rental charge. 11 C.F.R. § 114.9(d).

14 The Woodwards suggest that Woodward Outdoor Equipment was not reimbursed for the use
15 of its facility. Woodward Resp. at 1. Therefore, Woodward Outdoor Equipment may have made an
16 in-kind corporate contribution to the Committee for the Committee’s use of the corporation’s
17 parking area. *Id.* However, based on the location and small number of persons who purportedly
18 attended, any potential corporate contribution resulting from this one-hour event was likely

19 *de minimis*. Therefore, the Commission exercises its prosecutorial discretion and dismisses the
20 allegation that Woodward Outdoor Equipment violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
21 § 441b(a)) and 11 C.F.R. § 114.2. *See Heckler v. Chaney*, 470 U.S. 821 (1985).